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IN THE

Supreme Court of the United States

No. 749

ST. PETER'S ROMAN CATHOLIC PARISH, by Dominick Cerminaro and Herman Yannone, Trustees *ad Litem*,

Appellant,

vs.

URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH; CITY OF PITTSBURGH, a municipal corporation; and THE MOST REVEREND JOHN F. DEARDEN, BISHOP OF THE DIOCESE OF PITTSBURGH.

JURISDICTIONAL STATEMENT

APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT, AT NO. 235 MARCH TERM, 1958

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JURISDICTIONAL STATEMENT

Appellant, St. Peter's Roman Catholic Parish, by Dominick Cerminaro and Herman Yannone, Trustees *ad Litem*, files the following jurisdictional statement:

I. Opinions Below

The Opinion of the Supreme Court of Pennsylvania is reported at 146 A. (2d) 724, 394 Pa. 194. The Opinion of the Supreme Court is appended hereto and designated as Appendix 1. The Opinion of the Common Pleas Court of Allegheny County, Pennsylvania, is not reported, a copy, however, is set out in the record, filed simultaneously herewith.

II. Grounds upon which jurisdiction is invoked.

The proceeding was brought in the Court of Common Pleas of Allegheny County, Pennsylvania, by complaint in equity seeking injunctive and other relief. The appellees, defendants below, filed preliminary objections in the nature of a demurrer to the complaint requesting the Common Pleas Court to dismiss the action. The preliminary objections were sustained and the action was dismissed on July 28, 1958.

An appeal was taken to the Supreme Court of Pennsylvania which, by opinion, affirmed the action of the Common Pleas Court. The date of the judgment of the State Supreme Court is December 4, 1958. Re-argument was requested by appellant December 13, 1958, which was denied by the State Supreme Court on December 30, 1958. The notice of appeal was filed December 31, 1958 in the State Supreme Court.

The statutory provision which confers jurisdiction on the appeal to this Court is 28 U. S. C. A., Sec. 1257 (2).

The cases to sustain the jurisdiction of this Court are:

Charleston Federal Sav. & Loan Ass'n. vs. Alderson, 324 U. S. 182;

People of State of New York, ex rel., Bryant v. Zimmerman, 278 U. S. 63;

Fiske v. Kansas, 274 U. S. 380;

James Stewart & Co. v. Sadrakula, 309 U. S. 94;

Western Turf Ass'n. v. Greenberg, 204 U. S. 359.

The statute, whose validity is involved, is the Act of June 20, 1935, P. L. 353, Sec. 1, 10 P. S. 81, which reads in pertinent part:

> "Whensoever any property • • • has • • • been • • • conveyed to any • • • bishop • • • for the use of any

church, congregation, or religious society, for or in trust for religious worship * * * the same shall be taken and held subject to the control and disposition of such officers or authorities * * * having a controlling power according to the rules, regulations, usages, or corporate requirement of such church * * *, which control and disposition shall be exercised in accordance with * * * the rules and regulations, usages, canons, discipline and requirements of the religious body * * * to which such church, congregation, or religious society shall belong * * *"

III. Questions presented.

1. Does the construction by the State Supreme Court that the Act of 1935, by holding that such Act renders the members of a church parish incapable to bring suit to protect their rights in church property and membership, where the Bishop is unwilling or refuses to sue, constitute deprivation of the property and membership rights of the members in violation of the due process and equal protection clauses of the Fourteenth Amendment and the *ex post facto* provision of the Federal Constitution, Article I, Sec. 10?

2. Does the Complaint state a cause of action where a state agency, created to redevelop urban areas, in condemning land, discriminates arbitrarily against a church parish having Italian membership and exempts a non-Italian church in the same general area and the discrimination is not based on rational grounds, in violation of the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution?

3. Does the aforesaid action of the state agency in condemning the church violate the rights of its members to freedom of worship under the First and Fourteenth Amendments of the United States Constitution?

IV. Statement of the Case.

On April 3, 1958, the plaintiff, St. Peter's Roman Catholic Parish, an unincorporated association, acting through Dominick Cerminaro and Herman Yannone, as Trustees *ad Litem*, brought an action in equity in the Court of Common Pleas of Allegheny County, Pennsylvania, against Urban Redevelopment Authority of Pittsburgh and the City of Pittsburgh, both being governmental agencies, seeking, *inter alia*, an injunction against the Authority from accepting any deed which would dispose of plaintiff's interest in the land and building comprising St. Peter's Roman Catholic Church and Parish.

On April 10, 1958, plaintiff filed an Amended Complaint joining as a defendant the Most Reverend John F. Dearden, Bishop of the Diocese of Pittsburgh. On April 11, 1958, an application was made for a preliminary injunction, which the court refused. Thereafter the defendants each filed preliminary objections. With leave of court, on July 1, 1958, the plaintiff amended the Amended Complaint further, alleging that the Authority abused its discretion, acted arbitrarily and capriciously by discriminating unlawfully against the plaintiff and in favor of Epiphany Parish, which is also part of the Roman Catholic Parish located in the same general neighborhood as St. Peter's, that the Authority advertised on July 6, 1955 that all buildings within the area would be demolished, that relying upon that advertisement plaintiff took no action at that time. When plaintiff discovered that Epiphany Church was not to be demolished but was to remain standing, plaintiff filed the Complaint in Equity seeking injunctive and other relief.

In August of 1950, the Lower Hill Area of the City of Pittsburgh, including the area wherein St. Peter's Parish

is located, was declared as "blighted" by the City Planning Commission under the Urban Redevelopment Law of 1945 (35 P. S. 1701 *et seq.*), Act of May 24, 1945, P. L. 991.

By Ordinance No. 255, approved July 13, 1955, City Council approved redevelopment plans for the area (Exhibit A of the Preliminary Objections filed by the City of Pittsburgh).

By Resolution No. 69, approved October 2, 1957, the Authority condemned the entire area, including St. Peter's but excluding lands upon which Epiphany Church is located. The City went further and gave Epiphany the right to acquire additional lands surrounding it for its use.

On February 25, 1958, the Most Rev. John F. Dearden, trustee of the lands and buildings of St. Peter's Parish, accepted a bond to guarantee payment for condemnation and, on February 27, 1958, entered into an agreement with the Authority for the payment of $1,240,000.00 as damages.

Prior to the approval of the redevelopment plans by the City, the City, as required by law, advertised the proposed taking and demolition of the entire area and set a date for hearing on July 6, 1955. That advertisement informed interested parties that the entire area was to be cleared and specifically referred to all properties on "both sides of Fernando Street, (where St. Peter's is located) and both sides of Epiphany Street", (where Epiphany Church is located). See Exhibit A of Amended Complaint. In the advertisement nothing was said relative to the *exemption* of any property in the blighted area, and specifically no mention was made of the exemption of Epiphany. The exemption was first referred to in a plan submitted to Council on July 13, 1955. Neither the pastors nor the parishioners were notified of the proposed demolition of

St. Peter's until Palm Sunday, March 30, 1958. Upon learning of the proposed demolition, the parishioners immediately requested a hearing from City Council but were refused. The filing of the Complaint in Equity followed.

The complaint alleges that the congregation, as plaintiff, was never served with notice of the condemnation and proposed demolition of the church that the advertisement of the hearing before City Council was misleading in that the parishioners were led to believe that all buildings were to be razed and for that reason did not appear to voice protests and take prompt action; that there appears to be an unlawful discrimination on the part of the City and the uthority in razing all buildings except Epiphany; that St. Peter's is structurally better and more beautiful than Epiphany; that Epiphany extends far into the plan, whereas, St. Peter's is on the perimeter of the plan; that St. Peter's does not interfere with any street plan or any proposed public structure for public use, such as a plaza, park or parking area for the arena; that street changes had to be made to avoid interference with the buildings of Epiphany; that the Authority is paying more for St. Peter's than it would be required to pay for Epiphany and, therefore, is capriciously spending more taxpayers' money than is necessary to implement its original object and plan; and finally, that the taking of St. Peter's is unnecessary because its lands are going to be sold for commercial development.

These and other facts and circumstances are alleged as constituting conduct on behalf of the Authority and the City as "capricious, arbitrary and in bad faith".

The Preliminary Objections are based on the defendants' contentions (1) that the Complaint fails to state a cause

of action, (2) that plaintiff lacks capacity to sue, (3) that the Court lacks jurisdiction and (4) that plaintiff is barred by laches. The Common Pleas Court resolved the issue of jurisdiction in favor of plaintiff and the remaining issues in favor of defendants and dismissed the Complaint as amended. Plaintiff thereupon appealed to the State Supreme Court.

Appellant, in its appeal to the State Supreme Court, specifically raised the issues that the discriminatory action of the Authority was in violation of the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution and that the action of the Authority in condemning the church was in violation of the rights of its members to freedom of worship under the First and Fourteenth Amendments of the United States Constitution. These issues were raised in the Statement of Questions Involved in the Brief for Appellant.

In its brief, appellant contended in the State Supreme Court that the Act of 1935 P. L. 353, 10 P. S. 81, did not render the appellant church, the trustees or the parishioners incapable of bringing an action to vindicate their rights in this controversy.

The State Supreme Court in its Opinion held that the "plaintiff, as a parish or congregation, has no standing to sue", it based its holding on the Act of 1935. It emphasized "the members of the plaintiff parish are bound by the Act of 1935 and by these cases", (citing cases).

In its Petition for Re-argument, appellant challenged the validity of the Act of 1935 and raised the Constitutional issues here presented. In paragraph 7 of its Petition for Re-argument, appellant specifically contended as follows:

"The Court, by judicial legislation, extends far beyond its limits, the provisions of the Act of June 20, 1935, P. L. 135, by holding that such Act renders the members of St. Peter's incapable of bringing suit to protect their rights in church property and in church membership under the circumstances of this case. Such being the effect of the Court's holding, *we therefore contend that the decision construing the Act of 1935, and the Act itself as so construed and applied are unconstitutional and in violation of the rights of the members under the due process and equal protection clauses of the Fourteenth Amendment and the ex post facto provision of the Federal Constitution, Art. I, Sec. 10.*" (emphasis supplied)

The State Supreme Court denied the Petition for Reargument, thereby rejecting the contention of appellant that the Act of 1935 as construed and applied was unconstitutional. Appellant also sought by amendment in the State Supreme Court to join the Bishop as a party plaintiff. This was refused.

An appeal was promptly filed bringing the issues here for resolution.

V. The Federal questions are substantial.

The effect of the decision of the State Supreme Court is to destroy the property and membership rights of the parishioners of St. Peter's Roman Catholic Parish. The issues came before that Court on appeal from the Common Pleas Court solely on the pleadings. No evidence was taken since the Preliminary Objections, which were filed by the appellees, defendants below, were, in effect, a demurrer. Since the State Courts sustained the demurrer we must assume, for the appeal, the truth of the averments in the Complaint as amended.

In this appeal, the question to be considered is whether the Act of 1935 as construed and applied, disqualifying the members of the parish from bringing action, where the Bishop is unwilling or refuses to sue, is in violation of their constitutional rights to due process and to equal protection under the Fourteenth Amendment and, in its retroactive effect, in violation of the *ex post facto* clause.

It should be borne in mind that St. Peter's Roman Catholic Parish was constituted *prior* to the Act of 1935, and that a substantial portion of the lands and buildings were acquired or constructed prior to the enactment of such law.

The members of the Parish had the right to maintain an action to protect their property and membership rights *prior* to the Act of 1935. Appeal of *Schnorr*, 67 Pa. 138, Appeal of *Roshi*, 69 Pa. 462, *Cushman v. Rector, etc.*, 162 Pa. 280.

In its decision in our case, the State Supreme Court not only reaffirmed its decision in *Cannovaro v. Brothers of the Order of Hermits, etc.*, 326 Pa. 76, but went far beyond that decision insofar as the actions of the Authority and the City in this case are involved. The effect of the holding by the State Supreme Court is that "plaintiff has no standing to sue". By such sweeping disqualification the plaintiff and the members of its Parish have been denied their constitutional rights and remedies.

Where property or membership rights of the members of an association, whether incorporated or unincorporated, have been violated, the courts will afford the association a remedy, *N.A.A.C.P. v. Alabama*, 78 S. Ct. 1163, 1170. This rule is fundamental. Where, as here, the members possessed a suitable remedy before the passage of the Act

of 1935 and it was destroyed by such enactment, then the constitutional rights of the appellant and its members to due process and equal protection of the laws have been impaired and destroyed.

This contention was adequately presented in the Petition for Re-argument which was denied by the State Supreme Court. Since we are challenging the holding of the State Supreme Court in the sweeping legislative and retroactive effect of its Opinion, it is obvious that the proper way to raise the constitutional question as to the validity of the State law involved is by the method we have pursued. We think that this contention is consistent with the holding of this Court in *Charleston Federal S. & L. Ass'n. v. Alderson,* 324 U. S. 182. In that case this Court held that the method and manner of raising the issue of validity of the State law was not decisive as long as it was fairly presented to the State Appellate Court.

As a further reason why appellant contends that the questions presented are substantial enough to require plenary consideration by this Court, we would like to point out that if the ruling of the State Supreme Court is permitted to stand there is a serious danger that the church buildings erected upon the land taken by the Authority in condemnation proceedings will be demolished and a great shrine will have been lost not only to the citizens of Italian extraction in Pittsburgh, but to the people as a whole in the community.

The remaining questions relating to the arbitrary and discriminatory *action by the Authority* being in violation of the due process and equal protection clauses of the Federal Constitution were raised in the State Supreme Court prior to argument in the brief of appellant.

In our brief filed with that Court, appellant moved to amend its complaint further by adding allegations that the discrimination against the appellant "is based upon the fact that the membership of St. Peter's is of Italian ancestry while the membership of Epiphany is non-Italian".

It is basic that any discrimination by a governmental agency against persons because of race or nationality is clearly in contravention of the due process and equal protection clauses of the Fourteenth Amendment. While it is true that this question could be raised by a Petition for Writ of Certiorari addressed to this Court, nevertheless, since the proper method of bringing before this Court the issue of the validity of the Act of 1935 is by appeal, this Court may also consider and pass upon additional constitutional issues involved in the same case.

The same rule would apply to the issue raised in the State Supreme Court that the *discriminatory action of the Authority* in condemning the church is in violation of the rights of its members to freedom of worship under the First and Fourteenth Amendments. Since this was presented to the State Supreme Court in the Brief for Appellant, it is obvious that the Court resolved this issue against the appellant and it is properly before this Court for review, whether it is raised in a Petition for Certiorari or in this appeal.

Respectfully submitted,

LOUIS C. GLASSO,
Attorney for Appellant.

APPENDIX 1.

BOK, Justice.

We are asked to pass upon preliminary objections, sustained by the Court below, to a complaint in equity. The suit was brought by the parishioners, patrons, and members of St. Peter's Roman Catholic Church in Pittsburgh, as plaintiff, against the Urban Redevelopment Authority of Pittsburgh, the City of Pittsburgh, and the Bishop of the Diocese of Pittsburgh.

[1] The complaint refers to various documents in order to establish the plaintiff's claim but contains only one of them as an exhibit. The preliminary objections attach the others. Ordinarily the Court may not, on demurrer, consider matters beyond the pleading opposed, but under the circumstances above mentioned the instruments may be referred to. Detweiler v. Hatfield Borough School District, 1954, 376 Pa. 555, 104 A. 2d 110.

From these documents and the complaint, twice amended, the following facts appear:

In 1950 and 1951 an area of over ninety acres in the center of Pittsburgh was certified by the City Planning Commission to the Authority for redevelopment as a blighted area. The Authority submitted the proposal, with plan, to the council of the city, which fixed July 6, 1955, as the time for a public hearing. This having been held, council approved the project by ordinance. Plaintiff's church is located in the area, and so is another known as Epiphany Church.

The Authority took proper corporate action on October 2, 1957, to condemn plaintiff's land. Believing that execution of the redevelopment plan would require the razing

of both churches, the members of the plaintiff parish did not attend the public hearing, alleging that they did not wish to interfere with progress. The Authority then exempted Epiphany Church from the project and entered into a bond and later an agreement with the Bishop, dated February 25 and 27, 1958. By this agreement the Bishop accepted as damages the sum of $1,240,000 in compromise settlement of the taking and destruction of St. Peter's Church. The bond and agreement were neither reported to the plaintiff parish by the Bishop nor approved by it. This suit followed.

The complaint charges abuse of the Authority's discretion, discrimination, and capricious and arbitrary action. The reasons given have to do with the nature and purpose of the improvements contemplated by the plan of redevelopment.

The preliminary objections are: (1) that the complaint does not state a cause of action; (2) that the plaintiff lacked capacity to sue; (3) that the Court below lacked jurisdiction; and (4) that the plaintiff was barred by laches. Jurisdiction was upheld by the Court below and was not argued before us.

[2, 3] It need be noted only in passing that the purpose of the Authority is to deal with an area rather than with individual properties. Oliver v. Clairton, 1953, 374 Pa. 333, 98 A. 2d 47. And it is generally settled that unless bad faith, arbitrary action, or failure to follow a statutory requirement are shown, the certification by an Authority that an area is blighted and the plan for improving it are not subject to judicial review. Schenck v. Pittsburgh, 1950, 364 Pa. 31, 70 A. 2d 612; Oliver v. Clairton, *supra*, 1953, 374 Pa. 333, 98 A. 2d 47; Lazrow v. Philadelphia Housing

Authority, 1954, 375 Pa. 586, 101 A. 2d 664; Blumenschein v. Pittsburgh Housing Authority, 1954, 379 Pa. 566, 109 A. 2d 331. Plaintiff's criticisms of the Authority's action fall within this rule.

[4] The dispositive rule is that plaintiff, as a parish or congregation, has no standing to sue. The Bishop owns the property, in trust for the parish, and alone may dispose of it in accordance with the canons of the Roman Catholic Church.

His ownership as trustee is settled by the Act of June 20, 1935, P. L. 353, 10 P. S. § 81, which reads, in part:

> "Whensoever any property * * * has * * * been * * * conveyed to any * * * bishop * * * for the use of any church, congregation, or religious society, for or in trust for religious worship * * * the same shall be taken and held subject to the control and disposition of such officers or authorities * * * having a controlling power according to the rules, regulations, usages, or corporate requirement of such church * * *, which control and disposition shall be exercised in accordance with * * * the rules and regulations, usages, canons, discipline and requirements of the religious body * * * to which such church, congregation, or religious society shall belong * * *."

The cases of Canovaro v. Brothers of Order of Hermits of St. Augustine, 1937, 326 Pa. 76, 191 A. 140, and Post v. Dougherty, 1937, 326 Pa. 97, 191 A. 151, hold clearly that a member of a parish has no property right in his membership or any property right in church property save as a member; that his rights are governed by the laws of his denomination; and that the Roman Catholic canons and the decisions of the appropriate tribunals and officials of the Church control the issues raised in the case, unless those canons and decisions should contravene the law of the land. Both cases involved extinction of a parish by

proceedings in accordance with Church regulations. If a parish can be extinguished, a church building can be razed.

The members of the plaintiff parish are bound by the Act of 1935 and by these cases. They have not alleged that the action of the defendant Bishop contravenes the canons of the Church or the law of the land. The power to dispose of this Church property is therefore exclusively in him. Nor has plaintiff in any way impugned the action of the Bishop as being against the prescribed process of the Church or as being in bad faith, but rather in its answer to the preliminary objections has expressly excepted him from any imputation of fraud. Hence plaintiff may not have the advantage of the familiar rule that the beneficiaries of a recalcitrant or evil trustee may step into his place and sue.

For the same reason complaints about the conduct of the Authority are irrelevant and it is unnecessary to discuss the question of laches.

The order of the Court below, sustaining preliminary objections (1) and (2) and dismissing the complaint, is affirmed.

BELL, Justice (concurring).

I heartily concur with that part of Justice Musmanno's opinion which expresses so beautifully and spiritually our feelings about the Church of God. However, I would go further.

I shall assume that the action of the City Planning Commission in certifying, and of the council of the City of Pittsburgh in ordaining that an area of over 90 acres in the center of Pittsburgh was a "blighted area", was justified. However, the action of the Redevelopment Authority

(1) in condemning and ordering the destruction and demolition of beautiful St. Peter's Church was, in my opinion, outrageous and (2) when considered in connection with their further action in exempting from destruction the Epiphany Church, which was within the blighted area and less than two blocks away from St. Peter's Church, was arbitrary, discriminatory and unjustifiable. In my judgment the action of the Redevelopment Authority was, for each of the foregoing reasons, a manifest abuse of discretion and consequently was reversible. Blumenschein v. Pittsburgh Housing Authority, 379 Pa. 566, 109 A. 2d 331.

However, the act of the Bishop of the Diocese of Pittsburgh in accepting the Authority's offer of damages in the sum of $1,240,000 for the taking of St. Peter's Church apparently bars plaintiffs' remedy.

It is well settled that ecclesiastical matters are governed by church law and not by civil law except where property rights are involved. In Canovaro v. Brothers of Order of Hermits of St. Augustine, 326 Pa. 76, at pages 81, 84, 191 A. 140, 147, the Court said:

> "The act of 1935 recognized the binding effect of the internal laws of religious societies regarding the power of control and disposition of church property. * * * Under the canons of the church there can be no such thing as a separate and independent church organization within the Roman Catholic Church, whereby property may be acquired and held in opposition to its laws, canons, rules, and regulations, and at the same time be subject to its supervision and control. * * * Property control, as well as all other ecclesiastical matters, is now governed by church law, * * *.
>
> "The canons empower the Ordinaries to divide or dismember parishes when canonical reasons exist, notwithstanding the unwillingness [and opposition] of the rectors and members * * * Division, dismemberment, or suppression of parishes, and the effect thereof on

membership are purely ecclesiastical matters, dependent upon the church law as administered by the appropriate authorities and tribunals."

This case arose and was decided on preliminary objections. In Gardner v. Allegheny County, 382 Pa. 88, at page 94, 114 A. 2d 491, 494, this Court said:

> "Defendants by their 'preliminary objections admit as true all facts which are averred in the bill of complaint but not the pleaders' conclusions or averments of law': Narehood v. Pearson, 374 Pa. 299, 302, 96 A. 2d 895, 896. Moreover, when the sustaining of defendants' preliminary objections will result in a denial of plaintiffs' claim, or a dismissal of plaintiffs' suit, preliminary objections should be sustained only in cases which are clear and free from doubt: London v. Kingsley, 368 Pa. 109, 81 A. 2d 870; Waldman v. Shoemaker, 367 Pa. 587, 80 A. 2d 776."

It is very difficult to determine from the record[1] exactly what the Bishop's authority is. The complaint merely averred "that the funds for the purchase of the lands and the erection of the church and appurtenant buildings of said parish were furnished exclusively by the parishioners and not by any contributions from the funds of the Diocese of Pittsburgh"; and further averred "that title to the lands, buildings and appurtenances of the aforesaid St. Peter's Parish * * * is now held by the Bishop of the Diocese of Pittsburgh * * * a defendant herein as Trustee for the plaintiff parish and congregation."

Unfortunately, the complaint did not go further and aver that the Bishop had no authority under the canons of the Roman Catholic Church to control or dismember or sell this church or to permit its destruction, even though

1. In Canovaro v. Brothers of Order of Hermits of St. Augustine, 326 Pa. 76, 191 A. 140, and in Post v. Dougherty, 326 Pa. 97, 191 A. 151, the authority of a Bishop and of the Holy See were proved by testimony.

such action was opposed by all the parishioners. Moreover, it does not appear whether the Bishop would have accepted the Redevelopment Authority's offer of damages in the sum of $1,240,000 for the taking of St. Peter's Church, if he had realized that the Authority's action was in this respect unjustifiable and void. However, since there is no allegation by plaintiffs that the Bishop did not have the authority he exercised, nor any averment of the canons of the Roman Catholic Church, or that the canons had changed since the decision of this Court in Canovaro v. Brothers of Order of Hermits of St. Augustine, *supra*, I must, in the absence of a curative amendment to plaintiffs' complaint, concur in the dismissal of this appeal.

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No. 749 October Term, 1959

ST. PETER'S ROMAN CATHOLIC PARISH, by Dominick Cerminaro and Herman Yannone, Trustee ad Litem,

Appellant,

v.

URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH; CITY OF PITTSBURGH, a municipal corporation; and THE MOST REVEREND JOHN F. DEARDEN, BISHOP OF THE DIOCESE OF PITTSBURGH,

Appellees.

On Appeal from the Supreme Court of Pennsylvania, Western District, at No. 235 March Term, 1958.

MOTION TO DISMISS AND SUPPORTING BRIEF

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Act of May 24, 1945, P. L. 991, as Amended, 35 P. S. 1701 et seq. 4

MISCELLANEOUS:

Ordinance No. 255, Approved July 13, 1955 4
Resolution No. 69, Approved October 2, 1957 .. 4

Motion To Dismiss

IN THE
SUPREME COURT OF THE UNITED STATES

No. 749
October Term, 1959

St. Peter's Roman Catholic Parish, by Dominick Cerminaro and Herman Yannone, Trustees ad Litem,
v. Appellant
Urban Redevelopment Authority of Pittsburgh; City of Pittsburgh, a municipal corporation; and The Most Reverend John F. Dearden, Bishop of the Diocese of Pittsburgh, Appellees

On Appeal From Supreme Court of Pennsylvania

MOTION TO DISMISS

Each of the appellees in this case, the Urban Redevelopment Authority of Pittsburgh, the City of Pittsburgh, a municipal corporation, and the Bishop of the Diocese of Pittsburgh, pursuant to the Rules of Your Honorable Court, moves that the appeal from the final judgment of the Supreme Court of Pennsylvania be dismissed for want of jurisdiction, and in support of the motion, avers:

1. The appeal does not present a substantial Federal question.

2. The appeal does not present a justiciable case or controversy within the jurisdiction of Your Honorable Court.

SUPPORTING BRIEF

1. STATEMENT OF THE CASE

The appeal in this case is from a final judgment of the Supreme Court of Pennsylvania, *St. Peter's Roman Catholic Parish v. Urban Redevelopment Authority of Pittsburgh*, 394 Pa. 194, 146 A. 2d 724 (1958), which affirmed the decree of the Court of Common Pleas of Allegheny County, Pennsylvania, sustaining preliminary objections and dismissing a complaint in equity filed by persons who styled themselves, St. Peter's Roman Catholic Parish, by Dominick Cerminaro and Herman Yannone, Trustees ad Litem. The grounds upon which appellant asserts jurisdiction are:

> (1) the alleged construction by the State Supreme Court of the Pennsylvania Act of Assembly, approved June 20, 1935, P. L. 353, Section 1, 10 P. S. 81, which appellant argues is in violation of the Fourteenth Amendment and the ex post facto provisions of the United States Constitution, Article I, Section 10;
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> (2) a statement that the action of the Urban Redevelopment Authority in condemning under the power of eminent domain certain real property of St. Peter's Roman Catholic Church, a

Parish having Italian membership, violated the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution because the Redevelopment Authority did not also condemn property of another Roman Catholic Parish in the same general area; and

(3) the suggestion that the action of the Redevelopment Authority in condemning the Church property violated the rights of its members to freedom of worship under the First and Fourteenth Amendments of the United States Constitution.

2. STATEMENT OF THE FACTS

In August, 1950, the Lower Hill area of the City of Pittsburgh, constituting in all some 105 acres, was certified as a blighted area by the Planning Commission of the City of Pittsburgh in accordance with the Urban Redevelopment Law of Pennsylvania, approved May 24, 1945, P. L. 991, as amended, 35 P. S. 1701 et seq. St. Peter's Roman Catholic Church, a Parish of the Diocese of Pittsburgh, was included in that area.

After the certification, the City Planning Commission prepared a comprehensive Redevelopment Plan which became a part of the Redevelopment Authority Proposal. This proposal was submitted to the Council of the City of Pittsburgh for approval or disapproval, as provided in the Redevelopment Law.

Council held a public hearing on July 6, 1955. Thereafter, by Ordinance No. 255, approved July 13, 1955, Council approved the Redevelopment Project for the Lower Hill Area.

By Resolution No. 69, approved October 2, 1957, the Urban Redevelopment Authority, pursuant to the power of eminent domain vested in it by Section 9 of the Urban Redevelopment Law, 35 P. S. 1709, made that portion of Redevelopment Area No. 3 (Lower Hill District) comprising St. Peter's Parish, the subject of a condemnation proceeding and appropriated the same for public purposes.

On February 25, 1958, the Authority tendered to the Most Reverend John F. Dearden, then the Bishop of Pittsburgh, as Trustee, a bond as security for the payment of damages. The bond was accepted on the same date. Thereafter, on February 27, 1958, the Urban Redevelopment Authority and the Bishop of Pittsburgh, as Trustee, entered into an agreement as to the damages sustained by the Parish in the taking. The amount agreed upon was $1,240,000.00.

The present action was filed on April 3, 1958, against the Urban Redevelopment Authority and the City of Pittsburgh, seeking, inter alia, to enjoin the Authority from accepting any deed which would dispose of appellant's alleged interest in the land and buildings comprising St. Peter's Roman Catholic Church. The lower court took no action on the Complaint, indicating that the decree prayed for affected rights of the Bishop of the Diocese of Pittsburgh and that since he had not been made a party, the Complaint would not lie. The appellant has never challenged this action of the court.

On April 10, 1958, an amended complaint joining the Most Reverend John F. Dearden, Bishop of the Diocese of Pittsburgh, as Defendant, was filed and after a hearing on April 11, 1958, the lower court refused to grant a preliminary injunction. Thereafter, each of the Defendants filed preliminary objections to the complaint.

The lower court sustained the preliminary objections and dismissed the complaint. The opinion of the Common Pleas Court is not reported in any official

reports. A copy is contained in the record filed by the appellant.

In the complaint as filed the basic contention was that the property of St. Peter's Church was not blighted and, therefore, that the inclusion of this property in the blighted area was unjust, discriminatory and illegal. The appellant contended, further, that the agreement between the Urban Redevelopment Authority and the Bishop of the Diocese of Pittsburgh was illegal because the appellant had not been given notice of the proceedings or of the agreement. As an incidental argument, appellant contended that the property of St. Peter's Parish was not inferior to the property of Epiphany Parish, also a Parish of the Roman Catholic Church under the jurisdiction of the Bishop of the Diocese of Pittsburgh.

The Pennsylvania Supreme Court affirmed the judgment of the Court of Common Pleas by a unanimous decision. The decision was entered on December 4, 1958. Thereafter, appellant filed a petition for reargument which was refused on December 30, 1958. On the same date, the Supreme Court refused a motion by appellant to amend its pleadings further. The amendment had sought to make the Bishop of the Diocese of Pittsburgh an added party plaintiff in the action. The Bishop was already a party defendant in the action.

On or about January 3, 1959, appellant filed a motion to hold the record in the State Court pending an appeal to the United States Supreme Court. On January 5, 1959, the State Supreme Court refused this

motion, stating that no Federal question appeared to be involved and that none had ever been raised either in the court below or in the Pennsylvania Supreme Court.

On or about March 4, 1959, this appeal to Your Honorable Court was docketed and appellees have been served with a Jurisdictional Statement. This motion to dismiss is filed in behalf of all appellees.

For purposes of information, it should be noted that the Most Reverend John F. Dearden, Bishop of the Diocese of Pittsburgh, was appointed and is now acting as the Archbishop of the Archdiocese of Detroit. Most Reverend John J. Wright is his successor as Bishop of the Diocese of Pittsburgh. Bishop Wright was installed on March 18, 1959.

3. ARGUMENT

(1) There is no substantial Federal question in the questions raised by appellant in this case.

The argument of appellant that the decision of the Pennsylvania Supreme Court transgresses certain provisions of the United States Constitution is an after thought introduced into a dispute involving purely local issues.

Appellant's basic contention in the State Court was that it was improper to include St. Peter's Parish in a certification by the municipal authorities of the Lower Hill District as a blighted area, because St. Peter's Church was not a blighted property.

As the Pennsylvania Supreme Court stated in its opinion, the right to deal with an area rather than with individual properties, and the further right to exempt certain properties from a redevelopment project, have been upheld: *Berman v. Parker*, 348 U. S. 26, 99 L. E. 27 (1958); *Starr v. Nashville Housing Authority*, 145 F. Supp. 498 (1956) aff'd, 354 U. S. 916, 1 L. E. 2d 1432 (1957); *Oliver v. Clairton*, 374 Pa. 333, 98 A. 2d 47 (1953); *Schenk v. Pittsburgh*, 364 Pa. 31, 70 A. 2d 612 (1950).

With respect to the principal issue raised in the appeal to this Court, the Pennsylvania Act of 1935, P. L. 353, 10 P. S. 81, recognizes the inherent right of religious associations to decide for themselves, free

from State interference, matters involving the use and control of church property and the general ecclesiastical government of all the individual members, congregations and officers within a general church association. The Pennsylvania statute was upheld as constitutional in *Canovaro v. Brothers of the Order of Hermits of St. Augustine*, 326 Pa. 76, 191 A. 1940 (1937), and has been followed consistently in later decisions of the Pennsylvania Courts: *Post v. Dougherty*, 326 Pa. 97, 191 A. 151 (1937); *Lamb, Bishop v. Yencsik*, 89 D. & C. 35 (1954); *Keefe's Estate*, 89 P. L. J. 429 (1941).

This right of religious associations was specifically upheld in *Kedroff v. Saint Nicholas Cathedral*, 344 U. S. 94, 97 L. E. 120 (1952).

Whether or not the Act of 1935 is retrospective in its application is immaterial in the case at bar in view of the fact that appellant has no standing to sue and has no vested property right.

Indeed, appellant does not claim in any pleading filed in this action that it has any right, under the laws, rules or regulations of the Catholic Church to which it belongs, to represent St. Peter's Parish. Appellant makes no averment to sustain such a right under the canon law of the Catholic Church and there is no assertion that any right has been violated. The State decision in *Canovaro v. Brothers of the Order of Hermits of St. Augustine*, supra, and Your Honorable Court's decision in *Kedroff v. Saint Nicholas* Cathedral, supra, recognize the right of a church to govern its members and emphasize the principle that there can be no right in an individual, on the one

hand, to claim the benefits of membership in a church, and, on the other hand to refuse to obey its rules and regulations.

The decision in the present case does no more than recognize the right of the Bishop of the Diocese of Pittsburgh, as Trustee, to act for a Parish of the Diocese.. This is proper under the canon law; it is recognized by the State of Pennsylvania under the Act of 1935, P. L. 353, 10 P. S. 81, and by the decision of Your Honorable Court in *Kedroff v. Saint Nicholas Cathedral,* supra.

The two remaining questions involving alleged "discriminatory action" by the Urban Redevelopment Authority of Pittsburgh are likewise without merit. The Supreme Court of Pennsylvania did not pass specifically on these matters since its opinion rested primarily on the effect of the 1935 Pennsylvania statute. However, the Court of Common Pleas of Allegheny County expressly held that the allegation of discrimination was not based on adequate supporting facts, and therefore the Complaint was subject to dismissal by Preliminary Objection in the nature of a demurrer. A pleading must state facts and not mere conclusions, and the want of definite allegations essential to a cause of action or defense renders a pleading subject to demurrer. *Southern Railway Co. v. King,* 217 U. S. 524, 54 L. E. 868 (1910); *Pierce Oil Corp. v. City of Hope,* 248 U. S. 498, 63 L. E. 81 (1919); *Narehood v. Pearson,* 374 Pa. 299, 302, 96 A. 2d 895 (1953).

Reduced to its lowest common denominator, this appeal is an attempt to introduce a Federal question by

surmise. The decisions hold that this cannot be done: *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 80 L. E. 688, 711 (1936); *Blumenstock Bros. v. Curtis Publishing Company*, 252 U. S. 436, 64 L. E. 649, 652 (1920); *Jehovah's Witnesses Appeal*, 183 Pa. Superior Ct. 219, 130 A. 2d 240, appeal dismissed for want of a substantial Federal question, 355 U. S. 40, 2 L. E. 2d 71 (1957). See, also, *Herndon v. Georgia*, 295 U. S. 441, 443, 79 L. E. 1530, 1532; *American Surety Company v. Baldwin*, 287 U. S. 156, 77 L. E. 231.

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(2) There is no justiciable question

Appellant is a volunteer; it does not aver any right to represent St. Peter's Church under the rules and regulations of the Catholic Church. Therefore, it has no standing to bring this action, and consequently there is no justiciable question: *Kedroff v. Saint Nicholas Cathedral*, supra, where Your Honorable Court said:

> ". . . It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism provides for. Id. (US) 13 Wall at 728, 729."

CONCLUSION

It is an anomaly to contend that a decision of the State Supreme Court which upholds the right of a religious body to govern its affairs independently of State interference violates the First Amendment of the United States Constitution, made applicable to the States by the Fourteenth Amendment. Appellant's contention, if upheld, would be repugnant to the very section of the Constitution upon which Appellant purports to rely. No case is cited in the Jurisdictional Statement which has any application to the facts of the case at bar. The Pennsylvania cases cited are of no importance or effect since the passage of the Act of 1935, P. L. 353, 10 P. S. 81. That statute, purely procedural, gave proper recognition to the canons, rules, regulations and discipline of religious associations. Appellant had no property right in the property taken by the Urban Redevelopment Authority for the redevelopment of the Lower Hill District, located within an area certified as blighted by the municipal authorities.

Respectfully submitted,

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Argument

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